

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

CRL.A.No. 47 of 2001(B)

**CC.281/1998 of JUDL.MAGISTRATE OF FIRST CLASS COURT-V,
TRIVANDRUM (SPL .COURT FOR MARK LIST CASES) DT.13.10.2000**
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**APPELLANT: COMPLAINANT IN CC. 281/98 OF THE HON'BLE
----- JUDICIAL 1ST CLASS COURT V, TRIVANDRUM.**

**SURESH BABU, AGED 44 YEARS,
S/O.SOMAN, RESIDING AT T.C. NO.2/1652(3) NEAR
COSMOPOLITAN HOSPITAL, MEDICAL COLLEGE P.O.,
THIRUVANANTHAPURAM**

**BY ADV. SMT.P.DEEPTHI
SRI.T.MADHU**

**2NS RESPONDENTS: ACCUSED IN CC. NO.281/98 OF THE J.F.C.M.
----- COURT THIRUVANANTHAPURAM.**

- 1. SUDHEESH KUMAR, AGED 46 YEARS,
S/O.VELAYUDHAN, SUDHEESH
ELECTRICAL & ENGINEERING
WORKS NEMOM, THIRUVANANTHAPURAM.**
- 2. STATE OF KERALA, REP.BY THE
PUBLIC PROSECUTOR, ERNAKULAM.**

**BY ADV. SRI.P.GOPAKUMARAN NAIR
PUBLIC PROSECUTOR SRI.C.K.SURESH**

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 10/07/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

K.R. UDAYABHANU, J.

CRL.A.NO. 47 OF 2001

DATED THIS THE 10th July 2007

JUDGMENT

The appellant is the complainant in C.C.No. 281/98, the proceedings initiated under Section 138 of the Negotiable Instruments Act which stands dismissed and the accused acquitted.

2. The case of the complainant is that the accused borrowed a sum of R. 3,00,000/- and towards discharge of the same, he issued the impugned cheque dated 12-3-1998. When the cheque was presented on 25-3-1998, the same got dishonoured on account of funds insufficient. Lawyer notice was sent but there was no payment.

3. The evidence adduced in the matter consisted of the testimony of PW1 and Exts.P1 to P3. Defence has examined as DWs.1 and 2 and EXts.D1 to D4.

4. The case set up by the defence, when PW1 was cross examined and through the evidence of DW2, the father of the

accused, is that towards discharge of the borrowed of the amount, Ext.D3 assignment deed dated 4-12-1997 was executed by DW1 on 4-12-1997 assigning 9 cents of property and on the same day Ext.D4 receipt was executed by the complainant mentioning therein that towards the amount due, i.e. Rs.3,82,000/-, he has already received Rs. 1.5 lakhs and that on payment of the balance due, the property transferred in his name by the father of the accused shall be retransferred taking into account the then market price. Ext.D4 has been admitted by PW1 when he was cross examined. The case set up by the appellant is that Ext.D3 transaction is a separate and independent transaction and that the same has no connection with the borrowal evidenced by the impugned cheque. The trial court has rightly held that the above case cannot be upheld in view of the fact that Ext.D4 receipt mentions that the property will be retransferred on receipt of the balance amount. I find that the entire case set up by the complainant stands demolished in view of the above recitals in Ext.D4. Hence, I

find that the findings arrived at by the court below is the only conclusion that can be arrived at in the light of the evidence adduced. No interference in the order of the court below is called for. The appeal is dismissed.

K.R.UDAYABHANU, JUDGE

ks.

K.R.UDAYABHANU, J

CRL.A. 47 of 2001

JUDGMENT

10-7-2007